

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on January 09, 2001 at 8:00 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. Darrel Adams (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Jeff Mangan (D)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. Ken Peterson (R)  
Rep. Diane Rice (R)  
Rep. Bill Thomas (R)  
Rep. Merlin Wolery (R)  
Rep. Cindy Younkin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Mary Lou Schmitz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: **HB 117 - 1-05-01**  
**HB 151 - 1-05-01**

**Executive Action: HB 76 - Tabled 18-2**  
**HB 77 - Tabled 19-1**  
**HB 117 - DPAA 20-0**

**HEARING ON HB 117**

**Sponsor:** Rep. Joan Andersen, HD 23, said the Bill would make two changes in current statute and it would double the maximum incarceration time for Negligent Vehicular Assault from five to ten years. **EXHIBIT(juh06a01)**

**Proponents:** John Connor, Attorney General's Office, appearing on behalf of the Montana County Attorneys' Association said this Bill is actually the product of a legislative meeting by the County Attorneys' Association, which they have every two years to try to decide what issues of consequence they deal with and they think the legislature should have a look at. This Bill is not, from the County Attorneys' perspective and from the legislature's perspective, as well, a punishment-oriented Bill. The statute, 45-5-205, sub 4, basically addresses this concept of suspension and restitution.

In the 1997 Session when the penalty was increased to five years, one of the reasons was they needed to have more time to supervise people who commit these offenses. This Committee decided rather than incarceration, supervision was the preferential way of addressing these situations. That can be done. Under existing statute, 46-18-201 allows court to do it and the Committee knew that but it wanted to specifically state in this amendment that it considered that in terms of this particular piece of legislation, supervision is the preferential way of handling it. His Association does not disagree with that. The intent of the Association in proposing this Bill to the legislature is to increase that period of time to allow for a greater number of years of court ordered supervision over those people who cause the most serious injuries one can cause, short of death.

**EXHIBIT(juh06a02)**

**Kevin Skaalure**, relative of family involved in serious accident in Carbon County.

**Dale Skaalure**, former Choteau County Commissioner, Big Sandy,  
**EXHIBIT(juh06a03) EXHIBIT(juh06a04) EXHIBIT(juh06a05)**

**{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.7}**

**{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 0.5}**

**Opponents:** None

**Questions from Committee Members and Responses: Rep. Shockley**

asked **Mr. Connor** if he was aware there are 23 different kinds of assaults in the statutes now? Mr. Connor didn't know the number but knows the statutes on assaults were changed by the legislature last session to be more specifically defined. There were at least five separate offenses added last session. The Committee has heard testimony of the serious bodily injury to the victims. Is there another statute that might cover this circumstance? Mr. Connor said the reason these cases, like the one the Skaalure family was talking about, are charged as Negligent Vehicular Assault is because they do not have the option any longer of charging criminal endangerment, which is the way these kinds of cases used to be charged. That does provide a penalty of up to ten years. Some years ago the Supreme Court, in the Ravalli County case, State vs. Lambert, said that before one can be convicted of criminal endangerment or essentially doing the kinds of things that we now charge under Negligent Vehicular Assault, the state has to prove that the person should have known that whatever actual results occurred, would have occurred when he or she got into the car. In the Lambert case, the defendant had multiple DUIs. The Statute is 45-2-101, sub 34.

**Rep. Gallus** asked Mr. Connor to define incarcerated as opposed to the former language, "shall be in prison"? Mr. Connor said that is a legislative council determination. It shows up in all Bills where "shall be in prison" appears just as a housekeeping thing.

**Rep. Gallus** asked if a fiscal note would be requested. Mr. Connor said he checked and one is requested. **Rep. Andersen** said there was a fiscal note but it indicates there is no fiscal impact for FY2002 and FY2003.

**Rep. Laszloffy** asked Mr. Connor if it would be a good idea to have another charge, such as Aggravated Negligent Vehicular Assault so there is a minimum sentence and a maximum so the incarceration can be achieved for the duration you want and still allow some discretion in the other law? Mr. Connor said it would be inconsistent to say that there is an "aggravated negligence". It is almost like a deliberate negligence so from his perspective, if that was the Committee's intent, a better way to do it would be to add Negligent Vehicular Assault statute to the mandatory minimum sentence statute that appears in the sentencing statute, Title 46, Chapter 18.

**Rep. Hurdle** thanked **Rep. Andersen** for bringing the Bill. She personally would like to tighten this up and make it tougher. She would like to fix it so a judge can't suspend the sentence.

**Rep. Andersen** said she wouldn't oppose anything that would increase the likelihood that people would either receive

treatment and/or be able to continue in their jobs and provide restitution and provide for their families.

***{Tape : 1; Side : B; Approx. Time Counter : 0.5 - 19.8}***

**Rep. Newman** referred a question to Mr. Connor concerning his response to **Rep. Gallus**, the possibility of Department of Corrections' involvement and supervision or pre-release sites placement. Is it true that if the offender is convicted under sub section 2 which is a misdemeanor offense, there is no Department of Corrections' supervision? Mr. Connor said in some instances the Department of Corrections does not want to have to do it for misdemeanor offenses because they have a substantial workload already. **Rep. Newman** asked if it is not true that there is a conflict in the present criminal code about whether felons and misdemeanors can both be supervised by the Department of Corrections? Mr. Connor said yes.

**Reps. Adams, Clancy, Gutsche, Shockley and Peterson** asked Mr. Connor for clarification.

***{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 0.5}***

**Closing by Sponsor:** Rep. Andersen closed the Hearing on HB 117

***{Tape : 2; Side : A; Approx. Time Counter : 0.5 - 4.2}***

**Rep. Laszloffy** chaired the meeting at this point.

#### **HEARING ON HEARING HB 156**

**Sponsor:** Rep. Gary Matthews, HD4 said this Bill deals with the motor vehicle laws and last session the motor vehicle dealer laws were revamped. This came through the Business and Labor Committee, of which he was a member, and because he was a freshman had to chair a Bill and this it. This Bill will do three things: 1) the Bill will clarify the curb selling practices that will benefit the people who enforce these motor vehicle laws and will help the people that are regulated by them. 2) the Bill will create courtesy license plates which allow motor vehicle dealers to take part in our communities and 3) is a lot of housekeeping and clarifies the individuals who sell small trailers.

**Proponents:** Brenda Nordlund, Attorney General's office, Attorney Motor Vehicle Division. **EXHIBIT**(juh06a06)

**Steve Turkiewicz, Executive Vice President, Montana Automobile Dealers' Association**

**Jim Robinson, Executive Director, Independent Automobile Dealers' Association, Miles City**

**Opponents:** None

**Questions from Committee Members and Responses:** Rep. Adams asked Rep. Matthews what qualifies the recipients to obtain plates? Rep. Matthews said it's church organizations and non-profit associations.

Reps. Harris, Peterson, Thomas, Noennig, Shockley, Mangan, Adams, Clark, Gallus, Wolery, Clancy to Mr. Robinson, Brenda Nordlund, Allen R. Bundtrock, Great Falls MIADA, Mr. Turkiewicz for clarification and Representatives cited individual problems in their areas.

***{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 28.3}***

**Closing by Sponsor:** Rep. Matthews closed the Hearing on HB 156 by saying the legitimate motor vehicle dealers in this state want to work with the enforcement officials. It is simple and obvious. There are no opponents to this legislation. Everyone is trying to protect the consumer. One of the things they have to deal with is there are people out there who are trying to make a living, don't pay taxes or get insurance, which is needed. The people who enforce these laws need some clarification. That is what this Bill is trying to address.

***{Tape : 2; Side : B; Approx. Time Counter : 28.3 - 29.3}***

***{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 0.6}***

**EXECUTIVE ACTION ON HB 76**

***{Tape : 3; Side : A; Approx. Time Counter : 0.6 - 30.1}***

***{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 12.2}***

**Motion/Vote:** REP. GALLUS moved that HB 76 DO PASS. #1 Motion failed 5-15 with Reps. Shockley, Laszloffy, Clark, Adams, Clancy, Curtiss, Eggers, Gutsche, Harris, Hurdle, Newman, Noennig, Peterson, Rice and YOUNKIN voting no.

Motion/Vote: REP. LASZLOFFY moved that HB 76 BE TABLED. #2  
Motion carried 18-2 with Gallus and Hurdle voting no.

EXECUTIVE ACTION ON HB 77

Motion/Vote: Rep. Gallus moved that HB 77 DO PASS. #3, #6  
Motion failed 7 - 13 with Reps. Shockley, Laszloffy, Adams,  
Clancy, Curtiss, Eggers, Gutsche, Harris, Hurdle, Noennig,  
Peterson, Rice and Younkin voting no.

Motion: Rep. Clark moved an Amendment to omit the language which  
has been added which will be all changes Line 13 thru Line 16 of  
the Bill. #4 Rep. Clark withdrew his motion.

*{Tape : 3; Side : B; Approx. Time Counter : 12.21 - 23}*

*{Tape : 3; Side : B; Approx. Time Counter : 23 - 29}*

*{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 3.9}*

Motion: REP. NOENNIG moved a Substitute motion that HB 77 BE  
AMENDED to reinstate the deleted underlined portions on lines 13  
and 14 and to insert the knowledge the person was within 1,000  
feet of the Housing project as provided in Section 45-9-101.  
#5 Rep. Noennig withdrew his motion.

Motion/Vote: Rep. Laszloffy moved HB 77 be Tabled. #7 Motion  
carried 19-1 with Rep. Gallus voting no.

*{Tape : 4; Side : A; Approx. Time Counter : 3.9 - 13.3}*

EXECUTIVE ACTION ON HB 117

Motion: Rep. Younkin moved Do Pass. #8

*{Tape : 4; Side : A; Approx. Time Counter : 13.3 - 26.4}*

Motion/Vote: REP. THOMAS moved that HB 117 BE AMENDED for  
clarification. #9 Motion carried unanimously.

Motion/Vote: REP. GALLUS moved that HB 117 DO PASS AS AMENDED.  
Motion carried unanimously.

Meeting Adjourned.

**ADJOURNMENT**

Adjournment: 11:40 A.M.

---

REP. JIM SHOCKLEY, Chairman

---

MARY LOU SCHMITZ, Secretary

JS/MS

**EXHIBIT** (juh06aad)